IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6163 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ELCON CLIPSAL (I) LTD

Versus

UNION OF INDIA

Appearance:
Mr.Uday Joshi for
M/S TRIVEDI & GUPTA for Petitioner No. 1-2
MR DN PATEL, learned Standing Counsel for
Central Government for Respondent No. 1-3
on advance copy.

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE N.G.NANDI

Date of decision: 01/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

Heard learned counsel.

Rule. Mr. D.N.Patel waives service of rule on behalf of all the three respondents. A request has been made by both the sides that it is a short matter and the same may be finally disposed of at this stage itself.

A show cause notice dated 19.3.99 was issued against the present petitioners, which was confirmed after adjudication by the respondent No.3 i.e. Assistant Commissioner, Central Excise, Div.V, Ahmedabad. On 11.6.99 an order was passed confirming the demand of Rs.3,46,386/-- and imposing penalty of Rs.35,000/--. Against this order dated 11.6.99, the petitioners preferred an Appeal challenging the aforesaid order alongwith the stay Application before the Commissioner (Appeal), Central Excise and Customs, Ahmedabad. On 27.2.2001 a stay order was passed in the Appeal directing the petitioner - Company to pre-deposit Rs.1,00,000/-- by 31.3.2001 and report the compliance by 15.4.2001. The petitioner - Company pre-deposited the amount of Rs.1,00,000/-- on 31.3.2001 and informed the Range authorities in that regard and gave necessary details pertaining to the same in the monthly report. However, respondent No.2 i.e. Commissioner of Central Excise & Customs (Appeals) at Ahmedabad dismissed the Appeal for non compliance of the stay order being oblivious of the fact that the amount, as ordered in the said matter, had already been made good by way of pre-deposit on 31.3.2001 i.e. within the permitted time limit, because the appellate authority was not intimated of the factum of making good the pre-deposit in terms of the stay order. On 5.7.2001 the petitioner - Company preferred a Misc. Application for restoration of the Appeal stating therein that the stay order had been complied with but the factum of deposit could not be brought to the notice of the appellate authority. However, on 12.7.2001 a communication was issued rejecting this Misc. Application.

Petitioners herein are in fact aggrieved against this order dated 12.7.2001 because, in view of this communication dated 12.7.2001, the order passed in Appeal dismissing the same stands.

The factual position with regard to the deposit of the amount of Rs.1,00,000/-- on 31.3.2001 through a Challan is not disputed before us on behalf of the respondents. We fail to understand, when in fact the

amount of pre-deposit had been made good on 31.3.2001 under challan receipt and even if the Appeal had been dismissed under the mistaken belief that the stay order had not been complied with because the petitioners failed to inform the appellate authority with regard to said deposit, how Misc. Application, moved by the petitioners stating therein that the amount had been deposited and it was only by way of negligence or mistake that the appellate authority could not be informed with regard to the factum of the deposit of this amount, could be rejected. The rejection of the Misc. Application, as communicated on 12.7.2001 is, therefore, wholly unjust, arbitrary and illegal and it appears that the order has been passed without application of mind to the facts of the case. The petitioners' Appeal before respondent No.2, therefore, stands restored and has to be decided on merits. The order rejecting the Misc. Application dated 5.7.2001, as communicated by the Superintendent (Appeals), Central Excise & Customs, Ahmedabad on 12.7.2001 to the petitioners, is hereby declared to be illegal and quashed and set aside. This Special Civil Application is allowed. Rule is made absolute. No order as to costs.

(M.R.Calla,J)

(N.G.Nandi,J)